Case:16-00280-BKT13 Doc#:38 Filed:11/02/16 Entered:11/02/16 16:33:24 Desc: Main Document Page 1 of 22

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

ABIMAEL ORTIZ FIGUEROA

Debtor

DLJ MORTGAGE CAPITAL INC.

Movant

ABIMAEL ORTIZ FIGUEROA

Debtor

JOSE RAMON CARRION MORALES, ESQ.

Chapter 13 Trustee

Respondents

CASE NO.: **16-00280 (BKT)**

CHAPTER 13

MOTION FOR RELIEF FROM STAY PURSUANT TO 11 U.S.C. §362(d)(1) TO THE HONORABLE COURT:

COMES NOW secured creditor **DLJ MORTGAGE CAPITAL INC.**, hereinafter referred to as (**Movant**), through the undersigned counsel and very respectfully states, alleges and prays as follows:

- 1. **Movant** holds a secured claim against **Debtor** estate, by virtue of being the holder in due course of a Mortgage note in the principal sum of \$86,000.00, plus interest at an annual rate of 7½ %, which encumbers **Debtor** real property located at SR 1 Km 45.2 Lote #3, Bo. Beatriz, Caguas, Puerto Rico. (See claim no. 3.)
- 2. By filing the instant petition, all foreclosure proceedings against **Debtor** and the aforementioned property was stayed.
- 3. Debtor's Amended Plan filed on June 6, 2016, and confirmed on June 24, 2016, provides for direct payment to Movant. (ECF No. 21 & 34.)
- 4. **Debtor** is indebted to **Movant** in the principal amount of \$73,804.19 plus interest and advances. Said debt is secured by a deed of mortgage upon the property made reference to in

paragraph one (1).

- 5. **Debtor** is in arrears FIVE (5) post-petition payments of \$701.07, for a total post-petition arrearage of \$3,505.35. **See Exhibit I.**
- 6. The arrearage expressed herein does not pertain to the pre-petition arrears which were to be cured through the plan.
- 7. That **Debtor** has failed to provide **Movant** with adequate protection of its secured interest in the property made reference to in paragraph one (1), and their failure to keep current with their payments to **Movant** is sufficient cause for this Honorable Court to grant the relief herein requested. **11 U.S.C. §362(d)(1)**
- 8. That **JOSE RAMON CARRION MORALES, ESQ.**, is the duly appointed Chapter 13 Trustee in this case.
- 9. That **Debtor** is not in active in military service as evidenced by the enclosed certifications regarding compliance with the applicable provisions of the Service members Civil Relief Act ("SCRA"), 50 U.S.C. App. § 501 *et seq.* See Exhibit II.

WHEREFORE, Movant respectfully prays for an order of relief from the stay provided by 11 U.S.C. §362(a), thus authorizing Movant to proceed with the foreclosure of the mortgage against the property herein described with such further relief as it may deem just and proper.

NOTICE

Within fourteen (14) days after service as evidenced by the certification, any party against whom this paper has been served, or any other party to the action who objects to the relief sought herein, shall serve and file an objection or other appropriate response to this paper with the Clerk's office of the U.S. Bankruptcy Court for the District of Puerto Rico. Local Rule 4001-1. If no objection or other response is filed within the time allowed herein, the paper will be deemed unopposed and may be granted unless: (i) the requested relief is forbidden by law; (ii) the requested relief is against public policy; or (iii) in the opinion of the Court, the interest of justice requires

otherwise.

I HEREBY CERTIFY: That on this same date, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF SYSTEM which will send notification of the present filing to the parties in this case registered in said system; by regular mail to non CM/ECF participants and by certified mail to Debtor(s), his/her attorney, the Chapter 13 Trustee and the U.S. Trustee.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on this the 2nd day of October, 2016.

VAZQUEZ & VIZCARRONDO LLP

Attorneys for DLJ MORTGAGE CAPITAL INC. PO BOX 195389
SAN JUAN, PUERTO RICO 00919-5389
TEL. (787) 999-5252
FAX (787) 751-1038

s/NATALIA M. BATISTA-VAZQUEZ <u>USDC231810</u> <u>nbatista@vvalaw.com</u> 8300-1052 SPS#2572

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO

EXHIBIT I

In re:	Case No.: 16-00280 (BKT)
ABIMAEL ORTIZ FIGUEROA	Chapter 13
Debtor	

DECLARATION IN SUPPORT OF MOTION FOR RELIEF FROM AUTOMATIC STAY

Ashley Cruz					
I.	, declare	under penalty	of	perjury a	s follows:

- 1. I am a Document Control Officer of Select Portfolio Servicing, Inc. ("SPS") and am authorized to sign this declaration on behalf of SPS as servicing agent for DLJ MORTGAGE CAPITAL, INC., which is the entity that has the right to foreclose by virtue of being owner and holder of the note. This declaration is provided in support of the Motion for Relief from Stay (the "Motion").
- 2. As a mortgage servicer, SPS collects payments from borrowers and maintains up-to-date records concerning the loans it services in its electronic record-keeping system. SPS is a business and maintains the loan records in the course of its regularly conducted business activities and the records are made at or near the time of the event by or from information transmitted by a person with personal knowledge of the event. It is SPS's regular practice to keep such records in the ordinary course of a regularly conducted business activity.
- 3. I have access to SPS's business records, including the business records for and relating to the loan that is the subject of this action. I sign this declaration based upon my review of those records relating to the loan and from my own personal knowledge of how SPS's business records are kept and maintained.
- 4. The Debtor, **ABIMAEL ORTIZ FIGUEROA** had executed and/or delivered and/or is otherwise obligated with respect to that certain promissory note referenced in the Motion (the "Note"). Pursuant to that certain mortgage deed referenced in the Motion (the "Mortgage"), all obligations of the Debtor under and with respect to the Note and the Mortgage are secured by the property referenced in the Motion.
 - 5. As of August 10th, 2016, the unpaid principal balance of the Note is \$73,804.19.
- 6. As of August 10th, 2016 there are one or more defaults in paying post-petition amounts due, pursuant to the terms of the Note, as set forth in the chart below:

Number of Missed Payments	From	То	Missed Principal and Interest	Missed Escrow (if applicable)	Monthly Payment Amount	Total Amounts Missed
5	04/01/2016	08/01/2016	\$682.24	\$18.83	\$701.07	\$3,505.35
Escre	w Shortage (disb	ursed insurance):			0.00
	post-petition part			*		-0.00
300000000000000000000000000000000000000					Total:	\$3,505.35

Case:16-00280-BKT13 Doc#:38 Filed:11/02/16 Entered:11/02/16 16:33:24 Desc: Main Document Page 5 of 22

Abimael Ortiz Figueroa 16-002801(BKT-13) 8300-1052 / SPS#2572 Page 2

As of the date listed in this paragraph, the total post-petition arrearage/delinquency is \$3,505.35 \, This is the amount necessary to cure any post-petition default on or about the date hereof.

- 7. Upon information and belief, the unpaid amount of the prepetition arrearage and any other amounts to be cured under the confirmed plan is \$19,611.25, as of the execution of this document, which constitutes the prepetition default.²
- The next payment under the terms of the Note will come due on September 1st, 2016 and is in the amount of \$701.07
 - 9. Attached as **Exhibit A** is post-petition payment history.
- The Debtor (is/ are not) being evaluated for a loss mitigation option. If the Debtor [is/are] being 10. evaluated for loss mitigation options, the current status is as follows:

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct

Executed this 25 day of UCD QV, 2016.

Ashley Cruz Title:

Document Control Officer Select Portfolio Servicing, Inc.

¹ The total of missed post-petition payments for this impounded loan includes any missed escrow payments. Such missed escrow payments include amounts assessed for taxes and insurance and any previously assessed escrow shortage amount (if applicable). To avoid duplication, post-petition advances (if any) made for insurance, real estate taxes, or similar charges are not listed separately to the extent such advances would have been paid from the missed escrow payments. As part of the next annual RESPA analysis, the Bank will determine whether the escrow payments assessed to the debtor (including the missed escrow payments) result in a projected escrow shortage or overage. All rights are hereby reserved to assert or request any escrow amounts in accordance with RESPA and the total post-petition arrearage/delinquency is qualified accordingly. In addition, the amounts set forth herein do not include any legal fees or expenses of counsel incurred by Movant in connection with seeking the relief requested in the Motion.4 "The amount set forth herein is based on the amount reflected on the trustee's ledger. Additional information regarding this amount is available upon request.

² The amount set forth herein is based on the amount reflected on the trustee's ledger. Additional information regarding this amount is available upon request.

Case:16-00280-BKT13 Doc#:38 Filed:11/02/16 Entered:11/02/16 16:33:24 Desc: Main MFR Post-Petition Document History of Filing



Preparation Date:

Prepared by:

08/10/16 Lisa Rene Jones EXHIBIT A

Loan Information:

Loan Number	XXXXXX 2572
Debtors Name - 1	ABIMAEL FIGUEROA
Debtors Name - 2	
Property Address	SR 1 KM 452-LOTE # 3 BO
Property State	PR

Bankruptcy Information:

Bankruptcy Case #	16-00280
Filing Date:	1/19/2016
Person filing:	(1888)
Number of previous filings:	公司(京) 图 (2) (2) (1) (1) (2) (2)

Post petition due

Post petition due date:	04/01/16	
Post petition \$\$\$ due:	\$3,505.35	Comment
Post petition insurance:	\$0.00	Post-petition taxes and insurance included in annual
Post petition taxes:	\$0.00	escrow analysis and added to monthly payments.
Total Post petition due	\$3,505.35	

Post-Petition Payment History Detail

Post pmt Rcpt	Post Due Dt Pd	Mo \$ Due	\$ Received	Comments
02/05/16	02/01/16	\$701.07	\$701.07	
06/29/16	03/01/16	\$701.07 \$701.07	\$701.07	
Due	04/01/16	\$701.07	0.00	
Due	05/01/16	\$701.07	0.00	
Due	06/01/16	\$701.07	0.00	
Due	07/01/16	\$701.07	0.00	
Due	08/01/16	\$701.07	0.00	
Due	08/01/10	Ψ701.07	0.00	
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		Service Committee		
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Total Due	\$4,907.49
Total Received	\$1,402.14



EXHIBIT II

Last Name: ORTIZ FIGUEROA

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

	On Active Duty On Active	Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

	The Member or His/Her Unit Was Notified of a Future		
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Mary Mr. Snavely-Defor

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 4800 Mark Center Drive, Suite 04E25 Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization in the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. ý 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via this URL: https://kb.defense.gov/PublicQueries/publicQuestions/FaqsAnswers.jsp?Subject=Locating Service Members or Getting a Mailing Addresss. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. ý 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

Coverage Under the SCRA is Broader in Some Cases

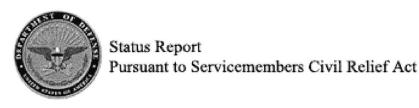
Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: 62E3OEC4U465J00



Last Name: ORTIZ-FIGUEROA

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

Active Duty Start Date	Active Duty End Date	Status	Service Componen
NA	NA NA	No	NA

Left Active Duty Within 367 Days of Active Duty Status Date				
Active Duty Start Date	Active Duty End Date	Status	Service Component	
NA	NA NA	No	NA.	

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA

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Mary M. Snavely-Dixon, Director

Department of Defense - Manpower Data Center

Snavely-Dison

4800 Mark Center Drive, Suite 04E25

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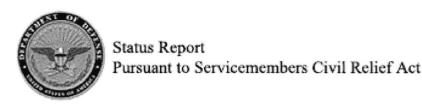
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Certificate ID: H2SDREB44465280



Last Name: ORTIZFIGUEROA

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA NA

Left Active Duty Within 367 Days of Active Duty Status Date				
Active Duty Start Date	Active Duty End Date	Status	Service Component	
NA	NA	No	NA	

	The Member or His/Her Unit Was Notified of a Future Ca	all-Up to Active Duty on Active Duty Status Da	ate and the second seco
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA

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Snavely-Dixon

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center

4800 Mark Center Drive, Suite 04E25

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Certificate ID: Y265VED4Z466Q60



Last Name: ORTIZ First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

	On Active Duty On Active	Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

CONTROL STOCKED SERVICE CONTROL SERVICE SERVICES	Left Active Duty Within 367 Day	s of Active Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA

Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA NA	No	NA

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Mary M. Snavely-Dixon, Director

Department of Defense - Manpower Data Center

Mary M. Snavely-Dison

4800 Mark Center Drive, Suite 04E25

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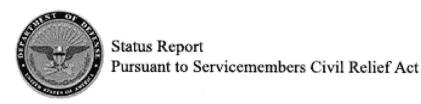
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Certificate ID: 82TD9E047466MF0



Last Name: FIGUEROA ORTIZ

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

ctive Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

	Left Active Duty Within 367 Days	of Active Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA

Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA.

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

Anavely-Dixon

Mary M. Snavely-Dixon, Director

Department of Defense - Manpower Data Center

4800 Mark Center Drive, Suite 04E25

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This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

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Certificate ID: A2V4JEA414674D0



Last Name: FIGUEROA-ORTIZ

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA

the first open and a second of the second	Left Active Duty Within 367 Da	lys of Active Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA

Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA NA	No	NA

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Certificate ID: D2B77E44V467F00



Last Name: FIGUEROAORTIZ

First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA NA

	Left Active Duty Within 367 Days	of Active Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA

Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA

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Certificate ID: 02E73EA4U467970



Last Name: FIGUEROA First Name: ABIMAEL

Middle Name:

Active Duty Status As Of: Nov-02-2016

Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

	Left Active Duty Within 367 Day	s of Active Duty Status Date	
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA NA	No	NA

Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA NA

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Mary M. Snavely-Dixon, Director

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Certificate ID: 62382ED43467D40